104

No. _____

Supreme Court, U.S.
FILED

08-153 AUG 4 - 2008

OFFICE OF THE CLERK

In The Supreme Court of the United States

ROGER H. VIAR, SR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Rhonda L. Overstreet
LUMSDEN & OVERSTREET
1220 Franklin Road
Roanoke, Virginia 24010
(540) 982-0566

Counsel of Record for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED

I. Did the Appellate Court err in finding the evidence sufficient as a matter of law to prove that Viar was a member of the single conspiracy as charged in Count One of the Superseding indictment, thereby depriving Viar of his due process rights?

II. Did the Appellate Court err in finding that the evidence was sufficient as a matter of law to prove that on or about April 26, 2004, that Viar intentionally possessed with intent to distribute methamphetamine, thereby depriving Viar of his rights of due process?

III. Did the Appellate Court err in affirming the drug weight as found by the Probation Officer, resulting in a violation of Viar's due process rights?

IV. Did the Appellate Court commit both procedural and substantive error in denying Viar's motion for a variance below the advisory guideline range, resulting in a violation of Viar's due process rights?

TABLE OF CONTENTS

Questions Presented i

Table of Contents ii

Table of Authorities iii

Opinions Below 1

Jurisdiction 2

Constitutional Provisions Involved 2

Statement of the Case 2

Reasons for Granting the Writ 3

Conclusion 12

Appendix to Petition for Writ of Certiorari:

App. A Opinion of the U.S. Court of Appeals for the Fourth Circuit, USA v. Viar, No. 06-4171, decided May 5, 2008 ..... A-1

App. B Judgment of the U.S. District Court for the Western District of Virginia, No. 6:03-cr-30073 filed January 30, 2006 ..... A-26

TABLE OF AUTHORITIES

FEDERAL CASES

Rita v. U.S., 551 U.S. ____ 2007 8

United States v. Bell, 954 F.2d 232 (4th Cir. 1992) 5

United States v. Brooks, 957 F.2d 1138 (4th Cir. 1992) 3

United States v. Crockett, 813 F.2d 1310 (4th Cir. 1987) 4

United States v. Randall, 171 F.3d 195 (4th Cir. 1999) 5

United States v. Wilson, 135 F.3d 291 (4th Cir 1998) 3

FEDERAL STATUTES

18 U.S.C. § 3553 ..... 8, 11

18 U.S.C. § 3553(b) 10

18 U.S.C. § 3553(c) 8

18 U.S.C. § 3553(a)(1) 9

18 U.S.C. § 3661 ..... 9, 10

21 U.S.C. § 841 2

21 U.S.C. § 846 1

IN THE

SUPREME COURT OF THE UNITED STATES

ROGER H. VIAR, SR

PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner, Roger H. Viar, Sr., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on May 5, 2008.

OPINION BELOW

On May 5, 2008 the Fourth Circuit Court of Appeals entered its opinion affirming the convictions of Viar for a methamphetamine conspiracy in violation of 21 U.S.C. Section 846 and for possession with the intent to distribute, as well as the District Court's imposition of a period of incarceration within the advisory guideline range. A copy of the opinion and judgment from the District Court, for the Western District of Virginia is attached in the Appendix.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code Section 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV of the United States Constitution. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

In July of 2004, the grand jury returned a superseding indictment, charging Viar with conspiring with individuals in California and Virginia to distribute more than 500 grams of a substance containing methamphetamine, 50 grams or more of methamphetamine, to possess with the intent to distribute cocaine and marijuana, all in violation of 21 U.S.C. Section 841. Count Two of the Indictment charged Viar with the possession with the intent to distribute a substance containing methamphetamine on April 26, 2004. On April 7, 2005, a jury convicted Viar on Counts One and Two. On January 25, 2006, the District Court found that

Viar was responsible for the distribution of 11 kilograms of methamphetamine, and consequently found the guideline range to be 188 to 235 months. The District Court denied Viar's request for acceptance of responsibility under the guidelines. The District Court sentenced Viar to 188 months of imprisonment. On January 30, 2006, the District Court entered the Final Judgment Order sentencing Viar to 188 months of incarceration. On February 6, 2006, Viar filed a Notice of Appeal challenging the conviction and the sentence.

Viar filed his Notice of Appeal challenging the convictions and the District Court's sentence. On May 5, 2008, the Court of Appeals affirmed the decision of the District Court.

REASONS FOR GRANTING THE WRIT

To prove a conspiracy to distribute methamphetamine the government must prove that: (1) there was an agreement between two or more persons to engage in conduct that violates a federal drug law; (2) that the defendant knew of the conspiracy; and (3) that the defendant knowingly and voluntarily became a part of the conspiracy. **United States v. Wilson**, 135 F.3d 291, 306 (4th Cir 1998). Even if the government's evidence first proves the existence of the conspiracy, the evidence must still establish a connection between any given defendant and the conspiracy to support conviction. See **United States v. Brooks**, 957 F.2d 1138, 1147 (4th Cir. 1992). The Appellate Court found the existence of the conspiracy based primarily upon the buyer-seller relationship of Viar and Davis. According to Davis, a primary witness

against Viar, his participation in the charged conspiracy was with the California people, Sonny Keyes and Don Owen, with the exception of the early part of 2003. He testified on direct exam that he stopped dealing with the California connection at the end of 2002 and sought a local source. (JA V. I 335) It is at this time he allegedly purchased from Viar for a few months. (JA V. I. 321-337, 339) On direct examination, Davis alleged that he purchased two ounces four or five times from Viar. (JA V. I 340-341) Davis confirmed that Viar had nothing to do with the California source of drugs. In essence, if the direct testimony of Davis is believed, Viar was a source of methamphetamine when Davis did not access the California sources. While it could be presumed that Viar knew or should have known that he was part of venture with Davis and Davis' clients, there is a complete lack of evidence that Viar should have know that Davis was in a venture with the California sources, a venture which included distribution far in excess of Viar's alleged deals with Davis. Viar acknowledges that while a conspiracy can be found in a case involving multiple transactions where there is an overlap of key actors, parallel suppliers and middlemen, methods and venture, **United States v. Crockett**, 813 F.2d 1310 (4th Cir. 1987), the evidence in this case, however, fails to establish even that necessary minimum overlap. Even if one accepts the testimony of Davis, Viar was nothing other than a fill in supplier for a very brief period, and no evidence was offered to prove that Viar participated with the suppliers, customers or key actors of the California venture to sustain that venture. While the government's evidence if believed proved Viar a member of a separate

conspiracy with Davis or even Roatenberry, the evidence fails to prove that he engaged in an agreement with Davis or Roatenberry that facilitated the overall enterprise of the California – Davis conspiracy. For these reasons, the evidence fails to prove Viar's guilt on Count One of the conspiracy as charged, and the affirmation of the conviction is violation of Viar's due process rights.

Second, Viar contends that the Court's affirmation of his conviction on Count two is a violation of his due process rights. In order to sustain its burden of proof, the government must prove beyond a reasonable doubt that: (1) Viar possessed a mixture or substance containing methamphetamine as described in the indictment; (2) that Viar knew that this substance was methamphetamine; and (3) that Viar intended to distribute this controlled substance. **United States v. Randall**, 171 F.3d 195, 209 (4th Cir. 1999)

The government's evidence of the intent to distribute was based primarily on the presence of cash in Viar's possession and the quantity of drugs found at the time of the search. Viar acknowledges that the intent to distribute drugs may be inferred from quantity, the packaging and the amount of cash seized. **United States v. Bell**, 954 F.2d 232 (4th Cir. 1992) However, in the instant case credible, uncontroverted evidence existed to refute the government's circumstantial proof of the intent to distribute.

On April 26, 2004, Viar was stopped by law enforcement while traveling in his personal vehicle. At the time of the stop and arrest, Viar was found in possession of one ounce of methamphetamine

and $6,187.00 in cash and a check in the amount of $857.31. Upon search of his vehicle, $26,471.00 in cash was found in a moneybag located in the rear passenger compartment. The government maintained that evidence of an ounce quantity was proof of intent to distribute. However, the government's own witness, alleged co-conspirator Woodcock, testified that a heavy user of meth would use two to two-and-one-half ounces in a month. The government's evidence proved that Viar was a heavy user, as evidenced by witness Preas who testified that Viar was a heavy user and an addict. Ruby Viar, wife of the appellant, was the cooperating individual who alerted the police to Viar's possession of the methamphetamine on April 26, 2004. At trial she testified that the weekend prior to this Monday morning stop and arrest, she and Viar went to Atlantic City and that Viar, a regular gambler, won $18,000.00 at the slot machines. Mrs. Viar further testified that Viar ran a profitable long running logging business and that he routinely kept a few thousand dollars in cash on him for business purposes related to Viar Logging. Moreover, the evidence was that no items of packaging or other items consistent with distribution were found on Viar's person or in his vehicle on April 26, 2004.

This evidence must call into question the trier of facts inference of intent to distribute. Although the law permits the jury to infer the intent to distribute, that inference is not to serve as presumption. Credible evidence offered by both the government and Viar contradicts the reasonableness of such an inference on these facts. Viar submits that no rationale trier of fact could

conclude beyond a reasonable doubt on this evidence that Viar possessed the ounce with the intent to distribute on April 26, 2004.

Third, Viar contends that the adoption of the District Court's finding on drug weight was clearly erroneous and results in a violation of his due process rights. The Probation Officer determined the drug weight as 11.8 kilograms. This finding was based on the conversion of the $500,000.00 money judgment in the jury's special verdict. This amount of money was converted to methamphetamine based on the price of $1,200.00 per ounce. Viar submits that the evidence did not support by a preponderance that the cash converted was the proceeds of drug sales. The evidence of proceeds for the charged conspiracy is based solely upon the allegations of Davis, Mitchell, Preas and Roatenberry as to the cost of an ounce. Similar to their testimony on the transaction itself, the witnesses contradicted each other and themselves as to the cost of an ounce. There was no corroborating evidence of the gross proceeds, independent of the inconsistent allegations of the alleged co-conspirators. The evidence supporting the quantity calculation therefore lacked the necessary indicia of reliability. The only credible evidence as to the source of money directly attributable to this Defendant came from Mrs. Viar and Viar's witness Don Houck, both of whom testified uncontroverted, as to the profitable nature of the Defendant's logging business.

Additionally, the Probation Officer noted that Viar indicated that he was involved with the distribution, primarily the use, of 538.65 grams of

methamphetamine. Defendant submits to the Court that his statements as to his involvement in the drug transactions are the most credible and accurate determination as to his responsibility. Viar described in detail his involvement with Evans and Roatenberry's connection to those transactions. He also described his involvement with Davis as a purchaser and his sales to Preas. As calculated by the Probation Officer, the total drug weight representing his involvement equals 538.65 grams of methamphetamine. By Viar's admissions, the drug weight would result in a ten-year mandatory minimum sentence. A sentence of imprisonment based upon the 11.8 kilograms is clearly erroneous and results in a violation of Viar's due process rights.

Finally, Viar contends that the District Court committed both procedural and substantive error in denying his motion for a variance below the advisory guideline range. According to **Rita v. U.S.**, 551 U.S. ____ 2007, the District Court must consider the factors of 18 U.S.C. 3553, give individual assessment of those factors and state in open court the reasons for its imposition of the particular sentence imposed. Viar contends that the District Court failed to satisfy the procedural requirements of 18 U.S.C. 3553 notwithstanding Viar's presentation of evidence is support of a sentence lower than the advisory guideline range. There is no evidence in the record which if any of the statutory factors the District court considered in imposing the 188 month sentence. Likewise the District Court did not state the reasons for the sentence he imposed as mandated by 18 U.S.C. 3553(c). At the conclusion of the Defendant's

evidence and motion in support of the variance the District Court stated only "It is the judgment of the court that the defendant Roger H. Viar is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 188 months..." (JA V. 1 P. 514) The record is devoid of the requirements set forth in 18 U.S.C. 3553 (c). Notwithstanding the Appellate Court's finigns that "the Court considered the relevant sentencing factors", there is absolutely no statement or reason offered by the District Court for the sentence it imposed. There is no analysis of any of the sentencing factors found in 18 U.S.C. 3553. It is for this reason that Viar contends that the District Court committed procedural error in sentencing Viar to 188 months and that such error is a violation of his due process rights guaranteed by law.

Should this Court find no procedural error Viar submits that the sentence of 188 months is unreasonable. 18 U.S.C. Section 3553(a)(1) directs the Court to consider the nature and circumstances of the offense and the history and characteristics of the defendant. Although the District Court is given inherent and discretionary power to impose the appropriate sentence, that discretion is not free of limits. The sentence is required to be reasonable, as is measured by the statutory directives of Section 3661 and Section 3553(a)(1). The District Court, on these facts, abused its discretion and imposed a sentence that is not reasonable based upon the character of this defendant and his post-verdict conduct. As established at trial and noted in the Pre-Sentence report, Viar was the owner of a logging business. This logging business was in operation for approximately thirty (30) years. Viar

actively worked this business until the time of his arrest. This business employed numerous individuals and was the primary source of support for Viar's family. This business generated significant revenue as a result of Viar's personal efforts and the business owned assets including equipment and tractors. This business continued to operate after Viar's arrest in an effort to provide ongoing employment for its employees and support for Viar's family.

Furthermore, immediately after his conviction, Viar commenced efforts to satisfy the jury's forfeiture verdict. Viar, through counsel, took the necessary steps to cause a sale of his business including its receivables, outstanding contracts, and logging equipment and tractors. This act on behalf of Viar was done with the knowledge and support of the government. As a result of the sale of the business, Viar paid to the U.S. government a monetary sum sufficient to satisfy the forfeiture in full. The forfeiture judgment was satisfied on or about December 22, 2005.

The voluntary sale of the business and the tender of the monetary judgment relieved the government of any further action or court proceedings to enforce the forfeiture verdict. Viar's actions saved the government the time and expense of collection efforts against Viar and his convicted co-conspirators.

Viar submits that the advisory guidelines do not take this specific extraordinary effort into consideration. The District Court's failure to take

this factor into consideration pursuant to 18 U.S.C. Section 3661 and 3553(b) was a significant abuse of discretion, and resulted in an unreasonable sentence.

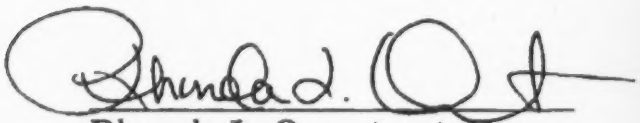
Viar further submits that his personal situation mitigates his sentence and provides further basis for departing from the advisory guidelines. At the time of sentencing, Viar was 62 years old. It is clear from the evidence at trial that Viar's personal drug use was substantial. Yet, the Defendant's involvement in any distribution conspiracy was limited in duration and scope. Viar engaged in the use of methamphetamine as it allowed him to conduct the physical duties of his logging work despite his age and the natural effects of aging, specifically a lessened ability to perform the demanding requirements of the work needed to support his family and others. A sentence shorter than the guideline range, and a sentence imposing the mandatory minimum of 10 years, adequately takes into consideration the factors of the offense, the need for just punishment, protection of the community, adequate deterrence for future crime, and gives reasonable consideration to the factors of Section 3553 as applied to the facts of this case. The Appellate Court's summary adoption of the District Court's sentence as being presumptively reasonable is a violation of the directives of 18 U.S.C. 3553 and violates Viar's due process guarantees.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the petition for writ of certiorari should be granted.

Respectfully Submitted.

ROGER H. VIAR, SR.



Rhonda L. Overstreet, Esq.
VSB #35717
906 Adams Street
Bedford, VA 24523
540-597-1024
540-587-4239
Attorney for Petitioner

August 4, 2008

No. _____

In The Supreme Court of the United States

ROGER H. VIAR, SR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

APPENDIX

Rhonda L. Overstreet
LUMSDEN & OVERSTREET
1220 Franklin Road
Roanoke, Virginia 24010
(540) 982-0566

Counsel of Record for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Table of Contents

App. A Opinion from the U.S. Court of Appeals for the Fourth Circuit, USA v. Viar, No. 06-4171 decided May 5, 2008 .....A-1

App. B Judgment of the U.S. District Court for the Western District of Virginia, USA v. Viar filed January 30, 2006 .....A-26

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4171

UNITED STATES OF AMERICA

Plaintiff - Appellee,

v.

ROGER H. VIAR, SR.,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Lynchburg. Normal K. Moon, District Judge (6:03-cr-30073-nkm-13)

Argued: January 30, 2008 Decided: May 5, 2008

Before MICHAEL, TRAXLER, AND KING, Circuit Judges.

Affirmed by unpublished per curiam opinion

ARGUED: Rhonda Lee Overstreet, LUMSDEN & OVERSTREET, Roanoke, Virginia, for Appellant. William Frederick Gould, OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville, Virginia, for Appellee. **ON BRIEF:** John L. Brownlee, United States Attorney, Roanoke, Virginia, Jean B. Hudson, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Roger H. Viar, Sr., appeal from his convictions and sentence for a methamphetamine conspiracy, in violation of 21 U.S.C. § 846 (Count One), and possession with intent to distribute methamphetamine, in contravention of 21 U.S.C. § 841 (a) (1) (Count Two). At the conclusion of a trial conducted in the Western District of Virginia in April, 2005, a jury convicted Viar of both offences and made a forfeiture award to the Government. Viar sought post-trial relief, contending that the evidence was

insufficient to justify the verdict and the forfeiture award. The district court denied relief, ruling that Viar's convictions were adequately supported by the evidence, and also that the forfeiture award was warranted. See United States v. Viar, No. 6:03-cr-30073 (W.D. Va. May 12, 2005 (the "Opinion").[1] In January 2006, Viar was sentenced to 188 months of imprisonment. On Appeal, Viar contends that his convictions should be vacated because there was insufficient evidence to support them, and that his sentence is defective for multiple reason. As explained below, we reject Viar's appellate contention of error and affirm his convictions and sentence.

I.

A.

On September 5, 2003, the initial indictment in this case (the "First Indictment") was returned by a grand jury in the Western District of Virginia, charging eight defendants ---- but not Viar ---- with, inter alia, a drug conspiracy to distribute 500 grams or more of methamphetamine.[2] Later in September 2003, the apparent ringleader of the conspiracy, James Davis, was arrested and began cooperating with the

---

1. The Opinion can be found at J.A. 475-81. (Citations to "J.A. ___" refer to the Joint Appendix filed by the parties in this appeal.)

2. In discussing the controlled substance methamphetamine, we mean a substance or mixture containing methamphetamine.

authorities. He immediately provided them with information about Viar. On March 1, 2004, he pleaded guilty to the conspiracy offense alleged in Count One of the First Indictment. Pursuant to his plea agreement with the Government, Davis continued to cooperate, seeking a "substantial assistance" reduction in his sentence. [3] On April 26, 2004, Viar was apprehended by the Virginia State Police while driving his Ford pick-up truck on a public highway in Campbell County, Virginia. [4] The officers were responding to information secured in the drug investigation, including a tip from Viar's wife, who had found illicit drugs in his truck. The officers searched Viar's vehicle and seized a plastic bag containing 25.3 grams of methamphetamine from the glove box, as well as over $26,000 in cash from a bag in the rear passenger compartment. They also searched Viar's person, finding $6187 in cash, and a check made out to him for $857.31.

On July 7, 2004, the grand jury returned a superseding indictment in this case (the "Superseding Indictment"), charging Viar and seven additional

---

3. Four of Davis's codefendants in the First Indictment, Clayton Keyes, William Keyes, Joseph Keyes, and Denise Hamilton, also pleaded guilty to the Count One conspiracy offense on March 1, 2004. A sixth defendant, Conald Owens, pleaded guilty to Count One on July 1, 2004.

4. We recite the facts in the light most favorable to the Government as the prevailing party at trial. See United States v. Kelly, 510 F.3d 433, 435 (4th Cir, 2007)

codefendants, including two named in Count One of the First Indictment who had not yet pleaded guilty (Frank Padgett and Me' Chelle Baldwin), plus several drug suppliers from California. The eight defendants named in the Superseding indictment were changed in the Count One conspiracy, as well as the forfeiture allegation. Viar was separately changed in County Two with possession of methamphetamine with intent to distribute, arising from the evens of April 26, 2004.

The Count One conspiracy alleged in the Superseding Indictment is materially and substantially the same as the Count One conspiracy alleged in the First Indictment — the only distinctions relate to the conspirators named and the date the conspiracy commenced.[5] The Superseding Indictment alleged, in pertinent part that,

beginning sometime in or about 1996, and continues through the return date of this Superseding Indictment, in the Western District of Virginia and elsewhere, the defendants, FRANK P. PADGETT, iii, MICHELLE [ME' CHELLE] M. BALDWIN, aka "Maude," DAVID M. BINGHAM, CURTIS L. MORTON, Sr., ROCK A. ROSSER, aka "Rocky," ROGER L. WOODCOCK, ROGER H. VIAR, Sr., and DAVID M. COLINGER, aka "Big O," did knowingly and intentionally . . . conspire . . . and agree together, and with diverse other persons know and unknown to the Grand Jury, to knowingly and intentionally distribute and possess with intent to distribute five

---

5. The First Indictment alleges that the conspiracy began in 1998, while the Superseding Indictment alleges it began in 1996.

hundred (500) grams or more of a mixture or substance containing a detectable amount of methamphetamaine.

J.A. 13-14. In both indictments, the Count One conspiracy allegedly occurred "in the Western District of Virginia and elsewhere," and involved, in addition to those named as defendant conspirators, "diverse other persons know and unknown to the Grand Jury." Id.

After the Superseding Indictment was returned, an arrest warrant was issued for Viar, and, on July 14, 2004, officers proceeded to his home and placed him under arrest. Upon searching Viar, the officers found a plastic bag containing a quarter to a half ounce of methamphetamine, plus $2719 in cash. After obtaining consent from Viar's wife to search the residence and the vehicles on the Viar property, the officers seized two bundles of cash from the truck of a Cadillac parked in front of the home— one valued at $7700, and the other at $24,120. They also seized three tractor-tractor trucks belonging to Viar.

Defendants Padgett and Baldwin "named as conspirators in Count One of both indictments) thereafter pleaded guilty to the Count One conspiracy. Coconspirators Bingham, Morton, Woodcock and Colinger – each named for the first time in the Superseding Indictment – also pleaded guilty to the Count One conspiracy. The two remaining named conspirators in the case, Viar and Rosser, put the prosecution to its proof and proceeded to trial.

B.

1.

Viar and Rosser's jury trial began on April 5, 2005, in Lynchburg. During the three-day trial, the prosecution presented several witnesses, seeking to prove that Via and Rosser had been involved in the methamphetamine distribution conspiracy alleged in Count One. [6] Woodcock, one of the convicted conspirators, testified that Rosser regularly moved multiple kilograms of methamphetamine from California to Virginia, where he sold quantities of the substance to Woodcock and convicted conspirator Davis (who then distributed the methamphetamine in the Lynchburg area). Davis was a key prosecution witness, and testified that, after a falling out with Woodcock, he obtained methamphetamine from other California sources, including convicted conspirator Bingham.

In 2003, Davis first met Viar and began obtaining quantities of methamphetamine from him, while continuing to be supplied by Bingham and others. Davis had several regular customers, including convicted conspirator Baldwin, who would occasionally pick up packages of methamphetamine for Davis. Davis maintained an organization of several conspirators who purchased packages of methamphetamine, then repackaged and sold the

---

6. Rosser pleaded guilty to Count One on April 6, 2005, the second day of trial, and was therefore not involved in the proceedings.

substance in smaller quantities. Davis obtained ten to twelve ounces (280 to 336 grams) of methamphetamine from Viar over the course of a few months in 2003. On one occasion, Jeremy Carroll, another prosecution witness, saw Viar hand Davis a white package while Vira was sitting in his pick-up truck. The package contained approximately two ounces of methamphetamine, and Davis immediately sold part of it to Joseph Keyes (a conspirator changed in the First Indictment). Davis admitted being personally responsible for buying and selling at least fifteen kilograms of methamphetamine.

The prosecution also called Jeffrey Roatenberry, a driver in Viar's logging business, who had obtained "eight-ball quantities" (approximately 3.5 grams) of methamphetamine from Viar at least once a week over a nine-month period in 2002 and 2003, for a total of about 126 grams. Viar later sold Roatenberry "ounce" quantities of methamphetamine, at least weekly, for a period on one-and-a-half to two years, conservatively estimated at a total of 2016 grams. Roatenberry personally used some of these drug and sold the balance to others. One of Viar's drug sources was Eddie Evans, who Roatenberry introduced to Viar (Roatenberry and Evans were never changed in the Count One conspiracy). On one occasion, Roatenberry obtained three ounces of methamphetamine from Evans and delivered it to Viar. Roatenberry also assisted Viar in dividing large quantities of methamphetamine into smaller quantities for resale purposes. Viar contacted Evans at least once every other week, and Viar told Roatenberry that he purchased methamphetamine from sources other than Evans. Viar once asked Roatenberry to hold $60,000

in cash for him and, on another occasion, told Roatenberry aabout $100,000 in case hidden in the trunk of his wife's car.

James Mitchell and John Henry Preas – who were not charged in the Count One conspiracy – also testified for the prosecution, and admitted obtaining "half-ounce to ounce" quantities of methamphetamine from Viar. Viar asked Mitchell to deliver methamphetamine to Preas because it was easier for Preas to deal with Mitchell. During this activity, Mitchell received approximately eight ounces (224 grams) of methamphetamine from Viar, and he used the substance to supply Preas and others. Mitchell paid Viar $1200 an ounce up front but, when he lacked sufficient funds, paid Viar after selling the methamphetamine. Mitchell was involved in this arrangement with Viar for five or six months in 2002 and 2003. According to Preas, Viar was a user as well as a distributor of methamphetamine.

Viar's wife, Ruby, presented some exculpatory evidence on behalf of her husband. She explained that Viar had won $18,000 in Atlantic city the weekend before he was arrested in April 2004. She also said that Viar routinely kept a few thousand dollars with him for his logging business. Viar called three witnesses and did not testify on his own behalf.

Viar made two motions for judgment of acquittal during the trial – at the close of the prosecution's case-in-chief and again at the close of all the evidence – both of which were denied. [7] On April 7, 2005, on completion of the initial phase of trial, the jury returned a guilty verdict against Viar on the Count One conspiracy and the Count Two substantive offense. On completing the forfeiture phase, the jury returned its Special Verdict, consisting of a $500,000 money judgment, plus the forfeiture of $40,000 in case and three large trucks. On April 13, 2005, Viar again moved for judgment of acquittal, arguing that his conviction on the Count One conspiracy was defective in two respects: (1) the prosecutions' evidence was

---

7. In connection with Viar's argument that the evidence failed to show that he was involved in the overall conspiracy alleged in Count One, the court instructed the jury on single conspiracy-separate conspiracy principles, and on the question of whether Count One failed to allege the conspiracy established by the evidence. That instruction was, inter alia, in the following terms:

> In order to sustain its burden of proof on [Count One], the government must show that the single conspiracy alleged in Count One of the indictment existed. Proof of separate or independent conspiracies is not sufficient. . . .Even if the evidence in the case shows that a defendant was a member of some conspiracy, but that this conspiracy is not, the single conspiracy charged in the indictment, then you must acquit the defendant of this charge.

Jury Instructions at 6-7, United States v. viar, No. 6:03-cr-30073

insufficient to show that he had conspired to distribute 500 grmas or more of methamphetamine, and (2) even if shown to be a conspirator, the prosecution had failed to prove that he was involved in the overall conspiracy alleged in Count One. Viar also contended that his conviction on the Count Two substantive offense, as well as the forfeiture verdict, lacked sufficient supporting evidence.

By its Opinion of May 12, 2005, the district court denied Viar's request for post-trail relief. The court found sufficient evidence – including the testimony of Davis (as corroborated by Carroll) – to implicate Viar and establish his guilt on the Count One conspiracy. See Opinion 3-4. [8] As to Count Two, the court concluded that the methamphetamine seized

---

8. In its opinion, the district court explained its ruling on Viar's evidence contention on Count One, in part, as follows:

Six government witnesses testified as to Viar's distribution of methamphetamine and his involvement in the conspiracy. This testimony established that Defendant was distributing methamphetamine to multiple buyers. The government also presented evidence linking James Davis and his supplies in California to Virginia residents, including Defendant Roger Viar. This evidence included Davis's testimony that he had purchased methamphetamine from Defendant on multiple occasions. Davis's testimony was corroborated by the testimony of Jeremy Carroll. Davis's testimony provided the necessary link connecting Defendant to the overall conspiracy.

Opinion 3.

from Viar on April 26, 2004, combined with the amount of cash he then possessed, permitted the jury to infer his intent to distribute drugs. See id. At 4. Finally, the court ruled that there was substantial evidence to support the forfeiture award. See id. At 4-6.

C.

A presentence report ("PSR") was then prepared, attributing 11.8 kilograms of methamphetamine to Viar. The PSR reached this amount by converting the $500,000 forfeiture money judgment to a drug quantity, at the rate of $1200 per ounce of methamphetamine. Viar objected to the drug quantity recommended by the PSR, asserting that the testimony of Roatenberry, Davis, and Mitchell was inconsistent and unrealiable, and arguing that no more than 538 grams of methamphetamine should be attributed to him. [9]

Viar also objected to the PSR's recommendation that he be denied an adjustment for acceptance of responsibility. The PSR concluded that, although Viar conceded during plea negotiations that he purchased significant amounts of methamphetamine, he admitted selling only small quantities to Baldwin, Mitchell, and Preas. According to the PSR, because Roatenberry, Mitchell, Preas, and Davis testified that they obtained larger quantities from Viar than he was willing to

---

9. During plea negotiations, Viar had offered to admit to 538 grams of methamphetamine, but the government would agree to his guilty plea on the Count One conspiracy only if he admitted to 15 kilograms.

acknowledge, Viar had falsified the extent of his involvement in the Count One conspiracy.

The district court overruled Viar's objections and adopted the PSR's Sentencing Guidelines calculations, resulting in a total offense level of 36, a criminal history category of I, and an advisory sentencing range of 188 to 2235 months. Viar then argued that he should be sentenced below the advisory range because he did not know several of the conspirators; he had a legitimate, thriving business; he had a drug problem; he had sold his logging business to the forfeiture judgment (saving the Government the time and expense of collection); he had paid the forfeiture judgment for the entire conspiracy; and due to his age (sixty-two year old). The Court rejected Viar's contentions, however, and sentenced him to 188 month in prison. In so doing, the court observed that it had considered all the factors "it was supposed to consider," including the fact that Viar had not fully accepted responsibility. J.A. 516. Viar filed a timely notice of appeal, and we possess jurisdiction pursuant to 28 U.S.C. § 1291

II.

We review de novo a district court's denial of a motion for judgment of acquittal. See United States v. Ryan-Webster, 353 F.3d 353, 359 (4th Circ. 2003). We are obliged to sustain a guilty verdict that, viewing the evidence in the light most favorable to the prosecutions, is supported by " 'substantial evidence. ' " United States v. Burgos, 94 F3d 849, 862 (4th Cir. 1996) (en banc) (quoting Glasser v. United States, 315 U.S. 60, 80 (1942)). We have defined "substantial

evidence" as "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." Id.

The Supreme Court has recognized that the "courts of appeals must review all sentences – [including those] inside . . . the Guidelines range – under a deferential abuse-of-discretion standard." Gall v. United States, 128 S. Ct. 586, 589-90 (2007); see also United States v. Osborne, 514 F.3d 377, 387 (4th Cir. 2008). "[A]ppellate review of sentencing decisions is limited to determining whether they are reasonable." Gall, 128 S. Cft. At 590 (internal quotation marks omitted). If the sentence imposed by a district court falls within the correctly calculated Guidelines range, we are entitiled, on appellate review, to apply a presumption of reasonableness. See Rita v. United States, 127 S. Ct. 2456, 2462 (2007) ; United States v. Go, 517 F.3d 216, 218 (4th Cir. 2008).

III.

With respect to his convictions, Viar challenges the sufficiency of the evidence to sustain the verdict on the Count One conspiracy offense as well as the County Two substantive offense. We assess in turn whether Viar was entitled to judgment of acquittal on either of these charges.

A.

Viar first contends on appeal – as he did in the district court – that there was insufficient evidence to

convict him of Count One. More specifically ,he contends that the court erred in denying his motion for judgment of acquittal on Count One because the prosecution's evidence "fail [ed] to prove that [he] was a member of a conspiracy involving the California suppliers and certain distributors in Virginia." Br. of Appellant 14. Viar asserts that the evidence established, at best, that he conspired with individuals in Virginia who were not connected to the conspiracy alleged in Count One.

In order to prove that Viar was conspirator in Count One, in violation of § 846 of Title 21, the prosecution was obliged to prove – as the jury was instructed – (1) that there was an agreement between two or more persons to engage in conduct that violated a federal drug law; (2) that Viar had knowledge of the conspiracy; and (3) that he knowingly and voluntarily became part of the conspiracy. Under the applicable principles, a criminal conspiracy – a partnership in crime in which each member of the conspiracy becomes the agent of every other member – can be proven by either direct or circumstantial evidence, or both. See United States v. Brown, 856 F2d 710, 711 (4th Cir. 1988). And, it is well-settled that "[o]nce a conspiracy has been proved, the evidence need only establish a slight connection between any given defendant and the conspiracy to support conviction." United States v. Strickland, 245 F.3d 368, 385 (4th Cir. 2001). In fact, it is settled that a conspirator need not have knowledge of all of his coconspirators, or the details of the conspiracy, and he may be convicted of conspiracy upon having played only a minor role. See id. (Relying on United States v. Burgos, 94 F.3d 849, 861 (4th Cir. 1996) (en banc)).

Assessing the evidence in the light most favorable to the Government, it was sufficient for a reasonable factfinder to conclude that Viar was criminally liable for the conspiracy alleged. In 2003, Viar distributed approximately 280 to 336 grams of methamphetamine to Davis, who pleaded guilty to the Count One conspiracy in the First Indictment. And, we have consistently held that a buyer-seller relationship, "when combined with evidence of a substantial quantity of drugs . . . '[supports] a reasonable inference that the parties were coconspirators.' " United States v. Yearwood, 518 F 3d 220, 226 (4th Cir. 2008) (quoting United States v. Mills, 995 F.2d 480, 485 n.1. (4th Cir. 1993))); see also United States v. Reid, No. 06-4826, 2008 WL 1734923, at *7 (4th Cir. April 16, 2008); Brown, 856 F.2d at 712 (recognizing that "[a] large quantity of [drugs] . . . supports an inference or presumption that appellant knew that he was a part of a venture which extend[ed] beyond his individual participation" (internal quotation marks omitted)). Thus, the quantity of drugs Davis purchased from Viar in 2003 sufficiently supports the inference that Viar and Davis conspired to distribute methamphetamine.

The trial evidence also showed that Davis was a ringleader of the Count One conspiracy in the Western District of Virginia. He purchased methamphetamine from several sources, including Woodcock, Bingham, and Viar. And, although Davis's drug sources changed from time to time, he had several regular customers, including conspirator Baldwin, who occasionally picked up packages of methamphetamine for Davis. Davis also maintained an organization of several conspirators who purchased packages of methamphetamine, then repackaged and

sold the substance in smaller quantities. In fact, Davis admitted involvement with over fifteen kilograms of methamphetamine.

As the district court recognized, Davis "provided the necessary link connecting [Viar] to the overall conspiracy." Opinion 3. Viar asserts, however, that even though he sold Davis several ounces of methamphetamine, he (Viar) had nothing to do with Davis's other drug sources, and that his conviction on Count One is thus undermined. Contrary to Viar's assertions, a conspirator, as noted above, need not have knowledge of all of his coconspirators or the details of the conspiracy, and he may be convicted of conspiracy upon having played only a minor role. Strickland, 245 F3d at 385. [10] Indeed, we have explained that

> it is not necessary to proof of a conspiracy that it have a discrete, identifiable organization structure; the requisite agreement to act in concert need not result in any such formal structure, indeed frequently, in contemporary drug conspiracies, [it] contemplates and results in only a loosely-knit association of members linked only by their mutual interest in sustaining the overall enterprise

---

10. As the court instructed the jury, "the government need not prove that an alleged coconspirator know each of the other alleged members of the conspiracy. Nor need it establish that any alleged coconspirator was aware of each of the transactions alleged in the indictment." Jury Instructions at 7, United States v. Viar, No. 6:03-cr-30073 (W.D. Va. May 12, 2005).

of catering to the . . . consumption market.

United States v. Banks, 10 F.3d 1044, 1054 (4th Cir. 1993).

Viar and the other conspirators were plainly shown to have the same goal with respect to the same product in the same area – distribution of methamphetamine in the Western District of Virginia. In resolving a single versus separate conspiracy issue, we have explained that a single conspiracy can exist if the evidence shows that the conspiracy proven, inter alia, " ' had the same objective, . . . the same goal, the same nature, the same geographic spread, the same results, and the same product.' " United States v. Johnson, 54 F.3d 1150, 1154 (4th Cir. 1995) (quoting United States v. Crockett, 813 F2d 1310, 1316-17 (4th Cir. 1987)). On this issue, the jury carefully instructed that

> [i]n order to sustain its burden of proof on [Count One], the Government must show that the single conspiracy alleged in Count One of the indictment existed. Proof of separate or independent conspiracies is not sufficient. . . .
>
> Even if the evidence in the case shows that a defendant was a member of some conspiracy, but that this conspiracy is not the single conspiracy charged in the indictment, then you must acquit the defendant of this charge.

Jury Instructions at 6-7, United States v. Viar, No. 6:03-cr-30073 (W.D. Va. May 12, 2005).

Significantly, no issue has been made or preserved on the propriety of this aspect of the instructions. And the Jury, by its verdict, concluded beyond a reasonable doubt that Viar was guilty of the Count One conspiracy. In assessing the evidence, we are unable to disagree with the district court's conclusion that there was sufficient evidence to support the conspiracy verdict. We thus reject Viar's challenge to his Count One conviction.

B.

Viar also asserts that there was insufficient evidence to convict him of the Count Two offense of possession of methamphetamine with intent to distribute. In that regard, the Superseding Indictment alleged that "on or about April 26, 2004, in the Western Judicial District of Virginia, the defendant, ROGER H. VIAR, Sr., ... did knowingly and intentionally possess with intent to distribute a mixture or substance containing [methamphetamine]." J.A. 15. In order to prove the Court Two offense, the prosecution was required to prove that Viar (1) possessed methamphetamine, (2) had knowledge of this possession, and (3) intended to distribute it. See Burgos, 94 F.3d at 873.

The evidence in support of Count Two was that, on April 26, 2004, Viar's pick-up truck was stopped by law officers and, at the time, he possessed slightly less than an ounce of methamphetamine, plus $6187 in cash and a check made out to him for $857.31. A search of his pick-up resulted in the seizure of over $26,000 in cash from a bag in a rear

passenger compartment. Contrary to Viar's contentions, his intent to distribute methamphetamine could readily be inferred by the jury from these events. See United States v. Collins, 412 F.3d 515, 519 (4th Cir. 2005) (concluding that jury can infer intent to distribute from factors such as drug quantity, packaging, concealment, and cash seized); United States v. Bell, 954 F.2d 232, 235 (4th Cir. 1992), overruled on other grounds by Burgos, 94 F.3d at 860; United States v. Fisher, 912 F.2d 728, 730 (4th Cir. 1990).

Viewed in the light most favorable to the Government, this evidence was sufficient for a reasonable jury to conclude that Viar possessed methamphetamine with the intend to distribute. Viar asserts, however, that he offered "uncontroverted evidence . . . to refute the government's circumstantial proof of the intend to distribute." Br. of Appellant 18. [11] Although Viar presented alternative explanation for the methamphetamine and cash seized from him, "[w]e may not weigh the evidence . . . . [That] function [] [is] reserved for the jury, and 'if the evidence supports different, reasonable interpretations, the jury decides which interpretation to believe.' " United States v.

---

11 In support of this contention, Viar relies on the testimony of his wife, Ruby, plus Preas and Woodcock. Ruby Viar Testified that her husband won $18,000 in Atlantic city the weekend before he was pulled over, and that he routinely carried a few thousand dollars with him for business purposes. Preas testified that Viar was a methamphetamine user, and Woodcock testified that a heavy user of methamphetamine could use two to two-and-one-half ounces in a month.

Wilson, 118 F.3d 228, 234 (4th Cir. 1997) (quoting United States v. Singh, 54 F.3d 1182, 1186 (4th Cir. 1995)). In sum, because a reasonable factfinder could conclude that Viar possessed methamphetamine with the intent to distribute, we also affirm his conviction on Count Two.

IV.

In challenging his sentence, Viar contends that the district court erred in adopting the drug calculation recommended by the PSR and in denying him an adjustment to his offense level based on his acceptance of responsibility. He also maintains that his sentence was unreasonable. We assess these contention in turn.

A.

First, Viar contends that the district court erroneously calculated the drug quantity attributable to him for sentencing purposes. A trial court's determination of drug quantity is a factual finding that we review for clear error. See United States v. Randall, 171 F.3d 195, 210 (4th Cir. 1999). For sentencing purposes, the Government is required to prove drug quantity by a preponderance of the evidence. Id. As a general proposition, a conspirator is liable for "all reasonable foreseeable acts" of his coconspirators that were carried out in furtherance of the conspiracy. See USSG § 1B1.3 (a) (B) (2004).

Before returning its Special Verdict on the forfeiture issue, the jury was instructed to hold Viar

responsible only for the amount that was reasonably foreseeable to him. The forfeiture verdict found the underlying conspiracy to involve $500,000 in gross proceeds, resulting from violations of 21 U.S.C. §§ 846 and 841 (a) (1), and also found that drug quantity to be reasonably foreseeable to Viar. Relying thereon, the PSR concluded that 11.8 kilograms of methamphetamine were attributable to Viar for sentencing purposes – premised on the conversation of the $500,000 forfeiture finding to a corresponding quantity of methamphetamine. [12]

We have recognized that a sentencing court is entitled to utilize the "drug equivalent" of drug-related cash in calculating drug quantity for sentencing purposes. See United States v. Hicks, 948 F2d 877, 883 (4th Cir. 1991). Although the quantity calculation made in the PSR was an estimate, "[a] district court's finding . . . is not erroneous if it is based on evidence possessing sufficient indicia of reliability to support its probably accuracy." United States v. Uwaeme, 975 F.2d 1016, 1021 (4th Cir. 1992). In the absence of an affirmative showing that the facts related in the PSR are incorrect, the sentencing court is entitled to adopt its findings. See United States v. Terry, 916 F.2d 157, 162 (4th Cir. 1990). As a result, the district court did not clearly err in attributing 11.8 kilograms of

---

12. The PSR used $1200 as an estimated price for an ounce of methamphetamine because is was average of the prices given by Viar and the various trial witnesses.

methamphetamine to Viar for sentencing purposes.[13]

B.

Next, Viar contends that the district court erred in failing to grant his request for an acceptance of responsibility adjustment. Viar asserts, in support of this proposition, that he had admitted his culpability prior to trial and only put the prosecution to its proof because of a disagreement with the prosecution on drug quantity. The court decided, however, that Viar was not entitled to such an adjustment, because he had not admitted the extent of the drug activity for which he was found culpable by the jury. We review a district court's decision to deny an adjustment for acceptance of responsibility for clear error. See United States v. Ruhe, 191 F.3d 376, 388 (4th Cir. 1999).

In order to receive an adjustment for acceptance of responsibility, a defendant must, pursuant to section 3E1.1 of the Guidelines, "prove by a preponderance of the evidence that he has clearly recognized and affimatively accepted personal responsibility for his criminal conduct." United

---

13. Viar makes several assertions that appear to challenge the sufficiency of the evidence relating to the $500,000 special verdict on forfeiture, but couches them in his contentions regarding drug quantity. Because Viar does not specify that he is challenging the sufficiency of the evidence supporting the special verdict, we need not further address the propriety of the forfeiture award.

States v. May, 359 F.3d 683, 693 (4th Cir. 2004) (citing United States v. Nale, 101 F.3d 1000, 1005 (4th Cir. 1996)). As a general proposition, an adjustment for acceptance of responsibility "is not intended to apply to a defendant who puts the government to its burden of proof at trial." USSG § 3E1.1 cmt. N.2 (2004). Nevertheless a defendant is entitled to go to trail and yet, in certain circumstance, still receive such an adjustment. For example, an adjustment might be warranted if a defendant proceeded to trial "to assert and preserve issues that do not relate to factual quilt." Id. It is well-settled, however, that "a defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility." Id. § 3E1.1 cmt. N.1 (a).1

This record reveal that, although Viar acknowledged being a drug distributor and being personally involved with 538 grams of methamphetamine, he did not accept responsibility before trial for the quantity attributable to him. The evidence established, as the district court recognized, that Viar was personally involved in well over 538 grams of methamphetamine. Thus, Viar did not accept responsibility for the conduct the jury attributed to him, and continued to deny the extent of his involvement. As a result, the district court did not err in finding that Viar had failed to accept responsibility for his criminal conduct and in denying him the adjustment sought.

C.

Finally, Viar argues that his sentence was

unreasonable because it did not account for the fact that: (1) he had a successful business that employed several individuals and supported his family; (2) he had sold his business to pay the forfeiture judgment; (3) he was elderly; and (4) he was a heavy drug user. Viar was sentenced to 188 month, at the bottom of his advisory Guideline range. Although Viar argues that a variance sentence below the Guidelines range would adequately have taken these facts into account, the sentence imposed nevertheless reasonable. [14] Viar's advisory Guidelines range was correctly calculated, the court considered the relevant sentencing factors, and it chose to sentence Viar at the low end of his advisory range. There is no abuse of discretion apparent in this regard, and we are thus obliged to affirm Viar's sentence.

V.

Pursuant to the foregoing, we reject Viar's appellate contentions and affirm his convictions and sentence.

---

14. Although Viar asserts that the court erred in failing to grant a "downward departure from the advisory guidelines," Br. Of Appellant at 22, he is actually arguing that the court erred in failing to impose a variance sentence. See United States v Hampton, 441 F.3d 284, 288 n.2 (4th Cir. 2006) (noting that district court "utilized the language of 'departure' rather than what has more recently become known as a 'variance, ' " and explaining difference).

AFFIRMED

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

JUDGMENT IN A CRIMINAL CASE

UNITED STATES OF AMERICA

v.

ROGER H. VIAR, SR.

Case Number6:03CR30073-013
USM Number: 10611-084

Gary L. Lumsden and Rhonda L. Overstreet
Defendant's Attorney

THE DEFENDANT:

__ pleaded guilty to counts(2)_____

__ pleaded nolo contendere to count(s)_____
which was accepted by the court.

X was found guilty on count(s) One (1) and Two (2)
After a plea of not guilty

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense
21 U.S.C. § 846	Conspiracy to Distribute Methamphetamine (Felony)
21 U.S.C. § 841(a)(1)	Possession with Intent to Distribute Methamphetamine

(Felony)

Offense Ended	Count
July 7, 2004	1
April 26, 2004	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

__ The defendant has been found not guilty on count(s)_____.

__ Count(s)_____ __ is
__ Are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs and special assessment imposed by this judgment are fully paid. If ordered to pay restitution the defendant must notify the court and United States Attorney of material changes in economic circumstances.

January 25, 2006
Date of Imposition of Judgment

_____
Signature of Judge

Norman K. Moor, United States District Judge
Name and Title of Judge

1/30/2006
Date

DEFENDANT: ROGER H. VIAR, SR.
CASE NUMBER 6:03CR30073-013

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total of:

188 months

(Total term consists of 188 months on each of Counts 1 and 2, and terms to be served concurrently with each other.)

X The Court makes the following recommendations To the Bureau of Prisons:

The court recommends that the defendant receive intensive drug treatment at the FCI Butner, NC, facility.

X The defendant is remanded to the custody of the United States Marshal.

__ The defendant shall surrender to the United States Marshal for this District:

__ at_____ ___ a.m. ___ p.m. on _____

__ as notified by the United States Marshal.

__ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

__ before _____on_____

__ as notified by the United States Marshal.

__ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on_____ to _____
a_____, with a certified copy of this judgment.

_____
United States Marshal

By:_____
Deputy United States Marshal

DEFENDANT: ROGER H. VIAR, SR.
CASE NUMBER: 6:03CR30073-013

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
5 years.
(This term consists of terms of 5 years on Count 1 and # years on Count 2, all such terms to run concurrently.)

MANDATORY CONDITIONS OF SUPERVISION

The defendant must report to the Probation Office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

__ The above drug testing condition is suspended, Based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
X The defendant shall not possess a firearm,

ammunition, destructive devise, or any other Dangerous weapon. (Check, if applicable.)

__ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

__ The defendant shall register with the state six offender registration agency in the state where the defendant resides, work, or is a student, as directed by the probation officer. (Check if applicable.)

__ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of the supervised release that the defendant pay in accordance with the Schedule of Payments sheet on this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each

month;

3) the defendant shall answer truthfully all in inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependants and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of rusks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirements.

DEFENDANT: ROGER H. VIAR, SR.
CASE NUMBER: 6:03CR30073-013

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall pay a special assessment and fine that is imposed by this judgment.

2. The defendant shall provide the probation officer with access to any requested financial information.

3. The defendant shall participate in a program of testing and treatment for substance abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

4. The defendant shall not possess a firearm or destructive devise and shall reside in a residence free of firearms and destructive devices.

5. The defendant shall submit to warrantless search and seizure of person and property as directed by the probation officer, to determine whether the defendant is in possession of firearms or illegal controlled substances.

DEFENDANT: ROGER H. VIAR, SR.
CASE NUMBER: 6:03CR30073-013

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
Totals	$200.00	$1,000.00	$

__ The determination of restitution is deferred until _____. *An Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

__ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(1), all non-federal victims must be paid before the United States is paid.

Name of Payee	Total Loss*

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18

for offences committed on or after September 13, 1994 but before April 13, 1996.

Restitution Ordered		Priority or Percentage
TOTALS	$0.00	$0.00

__ Restitution amount ordered pursuant to Plea Agreement $_____

__ The Defendant must pay interest on restitution and a fine of more than $2,500, unless restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

__ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

__ the interest requirement is waived for the
__ fine __ restitution

__ the interest requirement for the __ fine
__ restitution is modified as follows:

DEFENDANT: ROGER H. VIAR, SR.
CASE NUMBER: 6:03CR30073-013

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay the total criminal monetary penalties are due immediately and payable as follows:

A. X Lump sum payment of $200.00 immediately, balance payable

__ not later than_____, or
X in accordance __C, __D, __E, __F or X G Below) or

B. __ Payment to begin immediately (may be combined with __C, __D, __F, or __G below) or

C. Payment in equal_____(e.g., weekly, monthly, quarterly) installments of $_____
over a period of _____(e.g., months or years),
to commence_____(e.g., 30 or 60 days)
after the date of this judgment; or

D. __ Payment in equal _____(e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____(e.g. months or years, to commence_____(e.g., 30 or 60 days after release from imprisonment to a term of supervision; or

E. __ Payment during the term of supervised release will commence within_____(e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at the time; or

F. __ During the term of imprisonment, payment in equal_____(e.g., weekly, monthly quarterly) installments of $_____, or _____% of the defendant's income, whichever is greater, to commence _____(e.g., 30 or 60 days) after the date of this judgment; AND payment equal_____(e.g., weekly, monthly, quarterly) installments of $_____ during the term of supervised release, to commence _____ (e.g., 30 or 60 days) after release from imprisonment.

G. X special instructions regarding the payment of criminal monetary penalties:

> Payment in monthly installments of $20.00 beginning 90 days after designation by the Bureau of Prisons.

Any installment schedule shall not preclude enforcement of the restitution or fine order by the United States under 18 U.S.C. §§ 3613 and 3664(m)

Any installment schedule is subject to adjustment by the court at any time during the period of imprisonment or supervision, and the defendant shall notify the probation officer and the U.S. Attorney of any change in the defendant's economic circumstances that may affect the defendant's ability to pay.

All criminal monetary penalties shall be made payable to the Clerk, U.S. District Court, P.O. Box 1234, Roanoke, Virginia 24006, for disbursement.

The defendant shall receive credit for all payment previously made toward any criminal monetary penalties imposed.

__ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount and corresponding payee, if appropriate.

__ The defendant shall pay the cost of prosecution.

__ The defendant shall pay the following court cost(s):

X The defendant shall forfeit the defendant's interest in the following property to the United States:
See Final order of Forfeiture attached to this Judgment.

Payments shall be applied in the following order:
(1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.